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09/982,044	10/19/2001	Adil Attar		8696

7590

06/05/2003

ADIL ATTAR  
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EXAMINER

VARGOT, MATHIEU D

ART UNIT

PAPER NUMBER

1732

DATE MAILED: 06/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/982,044

Applicant(s)

ATTAR

Examiner

H. VARGAS

Group Art Unit

1732

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- ☒ Responsive to communication(s) filed on 3/10/03
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1 & 2 is/are pending in the application.
- Of the above claim(s) 1 is/are withdrawn from consideration.
- ☐ Claim(s) is/are allowed.
- ☒ Claim(s) 2 is/are rejected.
- ☐ Claim(s) is/are objected to.
- ☐ Claim(s) are subject to restriction or election requirement

## Application Papers

- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some\* ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

Office Action Summary

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1. Applicant's response to the restriction continues to be ambiguous, in that the "Original Specification and claims filed on 10/19/2001" have been elected. First of all, it should be noted that the specification is not capable of being elected for retention by applicant. The specification describes the invention and can be replaced by a substitute specification which contains no new matter should applicant desire. However, applicant does not "elect" a specification. In the instant case, substitute specifications have been submitted on January 18, 2002 and December 13, 2002. While there does not appear to be any differences between them, applicant is required to indicate in the response to this action whether or not these substitute specifications are to be entered. As of this moment, neither has been entered.

Concerning the restriction and election, it is being assumed that applicant has elected claim 2, the method for in-place filling and agglutination of the hollowed marker, particularly due to the previous response to the restriction in which applicant revised claim 2 and apparently desired claim 1, the marker itself, to be cancelled by bracketing the claim. The elected claim is hereby claim 2 as set forth in paper No. 5, the amendment dated December 13, 2002. As of this point, claim 1 is being held as non-elected. In the future, applicant is requested to clearly indicate which invention is being prosecuted in response to a restriction requirement.

2. Claim 2 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In claim 2, paragraph b), the second to last line contains the language "inclined

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about 60 to 90 degrees” concerning the centerline degree of inclination with respect to the planar base surface. Also, in paragraph c), first line, has a recitation to “dip coating” and line 5 therein starts off with “any hybrid process”. Support for these aspects can not be found in the specification as originally filed. Note that support for these aspects must be in the original specification, not in a substitute specification.

3. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In paragraph b), first line, “the load carrying interior posts” lacks antecedent basis--are these the “thin partition posts” mentioned in the preamble of the claim? Paragraphs c) and d) should preferably start off with the language --providing-- to match the language of the first two paragraphs. Paragraph b), third line down, “either,” should be deleted and replaced with --any of--. Fifth line down in paragraph b), the language “any hybrid process” is indefinite in that it is unclear exactly what such entails-- ie, what is meant by “hybrid” and the extent of the term “any”. Note also that preferred limitations, like “such as normal butane” at line 6 of paragraph b), are considered indefinite in that it is unclear whether or not such is to be read as a positive limitation-- ie, exactly what are the metes and bounds of the claims. Preferred limitations should be set forth in additional dependent claims. In paragraphs c) and d), there are numerous instances of the language “can be”, “can have”, “can also utilize”, etc. This language renders the metes and

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bounds of the claim uncertain in that it is unclear whether positive limitations are being recited.

Applicant is requested to replace this language with positive wording--ie, --is--, --has-- and --uses--, respectively. See also paragraph a), line 3, "can mold" (should be --molds--).

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Vargot whose telephone number is 703 308-2621.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-0661.

M. Vargot

June 2, 2003

*M. Vargot*  
MATHIEU D. VARGOT  
PRIMARY EXAMINER  
GROUP 1300

6/2/03